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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
	)	
	)	**CC Docket No. 96-45**
	)	
Federal-State Joint Board on Universal Service	)	

REPLY COMMENTS OF SPRINT SPECTRUM L. P. d/b/a SPRINT PCS

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Introduction and Summary

The comments in this proceeding underscore the importance of achieving the 1996 Telecommunications Act's universal service goals while controlling the size of the high cost fund. Accordingly, Sprint Spectrum L.P., d/b/a Sprint PCS[1] urges the Commission to adopt an additional principle under section 254 that directs the universal service tax, to be minimized. Sprint PCS also urges the Commission to develop and implement a system of competitive bidding for determination of the level of high cost supports in areas subject to competition, with bidders able to select any Census Block

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[1] Sprint Spectrum, L.P. (formerly known as Sprint Telecommunications Venture) is a joint venture formed by subsidiaries of Sprint Corporation, Cox Communication, Inc., Tele-Communications, Inc. and Comcast Corporation to provide nationwide wireless services. Sprint Spectrum, L.P., through its affiliates, holds broadband (A and B Block) PCS licenses in 30 Major Trading areas ("MTAs"). It also has interests in the licenses for the Philadelphia MTA and the Washington, D.C.-Baltimore MTA. Sprint Spectrum, L.P.'s affiliate American Personal Communications currently provides PCS services in the Washington, DC-Baltimore MTA.

Group (CBG) or aggregation of CBGs as the area in which they will bid for participation in the universal service system.

Sprint PCS also recommends, in order to ensure that administration of the fund will be fair and competitively neutral, that carriers' contributions to the fund be based on the number of end users they serve. Finally, Sprint PCS requests that the Commission find that states may not impose intrastate universal service support obligations on commercial mobile radio service ("CMRS") providers.

I. The Comments Underscore the Importance of Adopting Minimization of the Size of the High-Cost Fund as an Additional Principle.

As Sprint PCS pointed out in its Comments, the Joint Board's recommendation that the Commission adopt competitive neutrality as an additional principle under section 254 is useful, but does not go far enough.[2] The overriding goal of the Act is to bring the benefits of competition to all consumers of telecommunications services, but subsidies -- even competitively-neutral subsidies -- compromise this goal. As Joint Board member Schoenfelder pointed out in her separate statement, "a federal universal service fund that taxes consumers billions of dollars a year is not only wholly inconsistent with Congressional intent, but could be extremely harmful to consumers and . . . may harm competition *which is the principal objective of the law."*[3] Accordingly, in

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[2] *Federal-State Joint Board on Universal Service,* CC Docket No. 96-45, Recommended Decision, FCC 96J-3 (Nov. 8, 1996)(*"Recommended Decision")* at para. 349.

[3] *Recommended Decision,* Separate Statement of Commissioner Laska Schoenfelder Dissenting in Part at 9; *see also id.,* Separate Statement of FCC Commissioner Rachelle B. Chong Concurring in Part, Dissenting in Part at 13-14. ("Two competing interests must be balanced here: the advancement of universal service goals versus the impact that a huge fund may have on the bills of telecommunications users, particularly low income individuals.") This Commission also has made clear that "[t]he

order to realize the procompetitive policy of the Act, Sprint PCS has urged the Commission, under section 254(b)(7) of the Act, to adopt the principle that the level of subsidies must be held to the minimum required to comply with the universal service provisions of section 254.

The comments in this proceeding underscore the need to make this inherent, implicit principle explicit. A number of commenters pointed out the adverse effects that an excessively high level of overall funding would have on consumers and the competitive goals of the Act.[4] Other commenters, however, opposed any effort to make the system more efficient. So, for example, some commenters rejected any use of forward-looking costs as a basis for calculating supports, on the ground that such "hypothetical" costs "cannot guarantee that the fund will be sufficient as required by the statute"[5] and will violate section 254's "quality-service-at-affordable-rates mandate."[6] According to these commenters, only a model that permits full recovery of actual, embedded costs will satisfy the principles of section 254.[7] Similarly, some commenters

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method we ultimately adopt should be as simple to administer as possible,. . . technology-neutral, and *designed to identify the minimum subsidy required to achieve the statutory goal of affordable and reasonably comparable rates throughout the country." Federal-State Joint Board on Universal Service,* CC Docket No. 96-45, Notice of Proposed Rulemaking and Order Establishing Joint Board, FCC 96-93 (Mar. 8,1996) at para. 27 *(emphasis added).*

[4] *See, e.g.,* Comments of the Personal Communications Industry Association at 6; Comments of MFS Communications Company, Inc. at 14-15; Comments of Cellular Telecommunications Industry Association at 11.

[5] *See, e.g.,* Comments of the United States Telephone Association at 12; Minnesota Independent Coalition Comments at 46.

[6] Comments of Pacific Telesis Group at 5.

[7] *Id.* at 14.

argued that competitive bidding is *per se* unlawful under section 254 because it supposedly violates the principles of sufficiency and predictability.[8]

This reading of section 254 is entirely wrong. To portray section 254 as an absolute, open-ended mandate permitting unlimited taxation of consumers disregards the Act's fundamental purpose. Viewed in the light of the procompetitive policy of the Act, a sufficient system is one that supports the most cost-effective means of achieving reasonable levels of universal service, quality and affordability and brings the benefits of competition to all consumers of telecommunications services -- not a system based on the desires and investment strategies of the incumbents.

The present proceeding is only one round of the debate over reform of universal service, which will be carried on at both the state and federal levels for several years. The Commission will more accurately achieve the intent of Congress if it makes clear, that the universal service tax imposed on consumer must be minimized.

II. The Commission Should Adopt a Universal Service System Based on Competitive Bidding.

Sprint PCS's Comments expressly supported the Joint Board's conclusion that "a properly structured competitive bidding system could save significant advantages over other mechanisms used to determine the level of universal support for high cost areas,"[9] and urged the Commission to develop such a system for use wherever competitors are willing to bid against incumbents for the right to receive universal service supports.

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[8] *See, e.g.,* Comments of TDS Telecom and Century Telephone Enterprises, Inc. at 43; Comments of the Rural Telephone Coalition at 22: Minnesota Independent Coalition Comments at 28.

[9] *Recommended Decision* at para. 341.

Sprint PCS also recommended that proxy models be used to calculate universal service supports for incumbents for areas in which competition has not yet arrived.

Several commenters in this proceeding have expressed support for competitive bidding and urged the Commission to move promptly to develop and implement such a system.[10] Other commenters, however, argued that *any* system of competitive bidding, however well designed, will violate the Act. Specifically these commenters contend that any competitive bidding system will interfere with the prerogative of the states to designate eligible telecommunications carriers, will violate section 254's principle that universal service support mechanisms should be specific, predictable and sufficient.[11] These arguments are without merit.

The claim that competitive bidding will interfere with the states' designation of eligible telecommunications carriers ("ETCs") assumes that states cannot decide whether the public interest favors designation of an additional ETC unless they know, in advance, the levels of support that new and incumbent ETCs will receive. According to this argument, a state that designates an additional ETC that subsequently bids for universal service supports at a level that deprives the incumbent of the level of subsidy it claims to require, may regret its decision to designate the new ETC.

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[10] *See, e.g.,* Comments of the Personal Communications Industry Association at 15; GTE's Comments at 59; Comments of the General Services Administration at 9; Comments of Ameritech at 12.

[11] *See, e.g.,* Comments of TDS and Century Telephone Enterprises, Inc. at 43; Comments of the Rural Telephone Coalition at 22; Minnesota Independent Coalition Comments at 26-29.

This argument assumes, however, that states are entitled to base the public-interest determination of section 214(e)(2) on *protection* of the incumbent rural carrier from vigorous competition. This approach is obviously anticompetitive, and section 253 of the Act expressly deprives state commissions of this discretion. Competitive bidding, therefore, does not undermine any prerogative to which the states are entitled.

The language and purpose of the Act also do not support the argument that a system of competitive bidding, however well conceived, violates the section 254 principles of specificity, predictability and sufficiency. The Act does not require, as some commenters appear to believe, that universal service supports must assure each carrier of a "specific" and "predictable" amount of high cost support, which must be "sufficient" to cover each carrier's actual costs.[12] The Act requires only that the system be "sufficient . . . to preserve and advance universal service."[13] As the Joint Board has pointed out, a well-designed competitive bidding mechanism is well suited to achieve this goal.[14]

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[12] TDS Telecom and Century, for example, contend that supports must be "'predictable' and 'sufficient' *to each ETC. . .*" Comments of TDS Telecom and Century Telephone Enterprises, Inc., *supra* at 51 (emphasis added). In fact, the Act requires only a clearly defined method that is well-calculated to achieve the goals of section 254 -- not a guarantee that the process will leave all carriers equally well-off, regardless of their level of efficiency. The latter goal is a tribute to the persistence of the cost-plus regulation mentality.

[13] 47 U.S.C.§254(b)(5).

[14] Some commenters also argued that competitive bidding should not be used because it "assumes the presence of competition." *See* Comments of WorldCom, Inc. at 22; Minnesota Independent Coalition Comments at 26. This argument, of course, does not undercut the suitability of competitive bidding where competition *has* appeared. As Sprint PCS pointed out in its Comments, a suitable proxy model, rather than competitive bidding, should be used to calculate the level of support for incumbents in areas where competition has not yet appeared.

Some competitive bidding approaches that have been proposed, however, would not produce vigorous competition and should not be adopted. Notably, all bidders -- not just those whose bids do not exceed a specified amount -- should be permitted to provide universal service at the level of subsidy set by the results of the auction. Also, the Commission and the states should not impose carrier of last resort (COLR) obligations that act as barriers to new entry. Specifically, Sprint PCS agrees that eligible telecommunications carriers must be prepared to serve all customers in the Census Block Groups for which they have submitted bids,[15] and may be held to service quality standards that apply to all carriers. Bidders should not be held, however, to onerous market exit limitations and other COLR requirements that are not imposed on ETCs by section 214(e) of the Act, and that may discourage qualified carriers from bidding for the right to offer service.[16] Sprint PCS also endorses the use of a "low bidder's bonus," in addition to the amount of subsidy set by the bidding process, as a means of encouraging auction participants to bid vigorously.[17]

Finally, Sprint PCS strongly objects to any competitive bidding system that would permit a single auction participant to establish or expand the area of ETC obligations for

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[15] This obligation, in fact, is implicit in the Act's requirement that ETCs advertise the availability of their services in the area for which they have been designated as ETCs. 47 U.S.C. §214(e).

[16] Any universal service system that imposed obligations on ETCs beyond those specified in section 214(e), and that excluded carriers from participation in the system as a result, would be unlawful under the Act.

[17] GTE has suggested that its proposed auction system, which would disqualify participants submitting bids above a certain level from receiving subsidies, would act as an incentive for vigorous bidding. Adoption of a bonus for low bidders will achieve the same result, without reducing potential competition by excluding qualified carriers from participating in the system.

all bidders. This is the apparent intention of the GTE competitive bidding proposal, which requires participants to bid to serve the largest aggregation of CBGs that any participant announces its intention to serve. Under this proposal, the incumbent carrier apparently could designate its entire, statewide study area as the service area for which bidding will occur. When other participants then withdraw from the auction (as permitted, with a penalty, under the GTE proposal), the incumbent will remain as the only ETC, and will continue to receive supports at the level established by the proxy model. This approach, which gives incumbents an effective veto over new entry into high cost areas, should be rejected.

Sprint PCS remains convinced that the auction model will prove to be the most effective method of bringing competition to rural areas while minimizing the overall size of the universal service fund. The Commission should pursue its investigation of competitive bidding vigorously and should do so concurrently with its development of a proxy model for calculation of support to incumbents.[18]

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[18] As Sprint PCS noted in its comments, proxies should be developed on the basis of existing, wireline technology and used only to calculate supports for incumbents in areas in which competitors are not yet ready to serve. The comments of the Cellular Telecommunications Industry Association, recommending that the Commission develop a parallel set of proxies based on wireless technologies, suggest the magnitude of the task the Commission will face if it decides to adapt proxies to all technologies and potential competitors, rather than permitting market forces to set support levels when competitors are prepared to offer service. Comments of the Cellular Telecommunications Industry Association at 7.

III. Carriers' Contributions to Universal Service Should Be Based on the Number of Subscribers They Serve.

As Sprint PCS pointed out in its Comments, the "net gross revenues from telecommunications services" approach to calculation of universal service support contributions, recommended by the Joint Board, offers opportunities for gaming the system that will severely complicate the administration of the fund and produce inequitable results. Notably, Sprint PCS pointed out that carriers subject to such a system will characterize their services as enhanced, or will seek to place their services in some other nontelecommunications category, in order to reduce their contributions to the fund. Similarity, with the increasing convergence of telecommunications services, firms that package a variety of telecommunications and nontelecommunications services together will present insoluble problems of revenue allocation under any system of revenue-based contributions.[19]

In order to fashion an equitable, administrable system, the Commission should reject revenue-based approaches to calculation of universal service contributions in favor of a simple, equitable and easily administered formula based on the number of subscribers a carrier serves.

[19] Sprint PCS's concern is borne out by the Comments of MFS Communications, which supports the Joint Board's approach but argues for the exclusion of various categories of service revenues from the contribution formula. Notably, MFS asserts that private line revenues and "revenues associated with services that use telecommunications but are not telecommunications services, such as enhanced services, would be exempt from [the] revenue calculation" proposed by the Joint Board. Comments of MFS Communications Company, Inc. at 47.

IV. States Lack Jurisdiction to Impose Universal Service Support Obligations on CMRS Providers.

A number of commenters have noted the Joint Board's error in stating, without analysis or support, that section 332(c)(3) of the Communications Act "does not preclude states from requiring CMRS providers to contribute to state support mechanisms."[20] The Joint Board's conclusion exceeds its mandate and ignores the legislative history and plain language of section 332(c)(3) -- most notably, the section's limitation of states' authority to require CMRS providers to participate in state universal service programs to cases in which "commercial mobile services . . . are a substitute for land line telephone exchange service for a substantial portion of the communications within such State . . ."[21]

The states' lack of authority to impose universal service obligations on CMRS providers is confirmed by the recent state court decision in *Metro Mobile CTS, et al. v. Connecticut Department of Public Utility* Control.[22] The court in that case found that "by expressly exempting from preemption the assessments which are made on cellular providers in a state in which cellular service is a substitute for landline service, Congress [in section 332 (c)(3)(A)] left no ambiguity that cellular providers in states in which

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[20] *See Recommended Decision* at para. 791.

[21] 47 U.S.C. sec. 332(c)(1)(B). *See* Comments of the Personal Communications Industry Association at 32; Comments of Bell Atlantic NYNEX Mobile, Inc. at 2; Comments of the Cellular Telecommunications Industry Association at 12; Comments of Celpage, Inc. at 6; Comments of PageMart, Inc. at 2-3.

[22] No. CV-95-05512758 (Connecticut Superior Court, Judicial District of Hartford-New Britain Dec. 9, 1996) ("Metro Mobile").

cellular is not a substitute for landline service fall under the umbrella of federal preemption."[23]

Sprint PCS agrees that the states lack jurisdiction to require CMRS providers to participate in state universal service programs, and urges the Commission to find that the Joint Board's contrary conclusion is in error.

[23] Metro Mobile, *supra*, slip op. at 7. Cellular service, of course, is a variety of CMRS service, and the finding of the *Metro Mobile* court is applicable to state regulation of all CMRS providers.

Conclusion

The comments in this proceeding show that CMRS providers are prepared to bring competition to high-cost areas of the country and to contribute to the federal program through which support to high cost areas will be provided. The Commission should build on the work of the Joint Board to ensure that the promise of new, efficient service for customers living in rural, high-cost and insular areas will be realized at minimum cost to consumers, in a way that brings the benefits of competition to all consumers of telecommunications services.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Kimberly E. Thomas, do hereby certify that a copy of the foregoing **REPLY COMMENTS OF SPRINT SPECTRUM L.P. d/b/a SPRINT PCS** was mailed on this 10th day of January, to the following:

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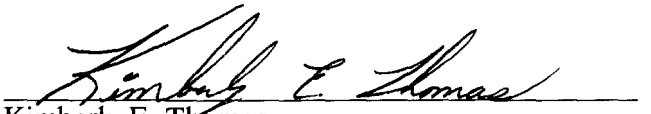

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